

FILED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ROBERT HAWKINS,

Plaintiff,

v.

CASE NO.:

**UNITED STATES DEPARTMENT
OF LABOR, MINE SAFETY AND
HEALTH ADMINISTRATION,**

Defendants.

3:05-cv-269-f-32TEM

COMPLAINT (INJUNCTIVE RELIEF SOUGHT)

Plaintiff Robert Hawkins, files this Complaint against Defendant, Department of Labor, Mine Safety and Health Administration ("MSHA"), and alleges:

1. Plaintiff brings this suit under the Freedom of Information Act, 5 U.S.C. §552 ("FOIA").
2. Plaintiff was denied records relating to the intake, investigation and outcome of the administrative complaint of retaliation he filed with MSHA after Iluka Resources, Inc. ("Iluka") fired him in violation of the Federal Mine Safety and Health Act of 1977 (the "Mine Safety Act").
3. This court has jurisdiction over this action pursuant to FOIA and 28 U.S.C. §1331 and § 1346.
4. Venue is proper in this district under 5 USCA § 552(a)(4)(B).

5. Plaintiff resides in Putnam County, Florida. Plaintiff was a miner employed at Iluka's Clay County, Florida operations plant which has produced titanium minerals and zircon since 1972. Plaintiff was ordered or pressured to work under unsafe and illegal conditions in violation of the Mine Safety Act on numerous occasions. Plaintiff objected and refused to participate. In retaliation, Iluka terminated Plaintiff's employment on October 8, 2003.
6. Department of Labor, an agency of the United States, has possession and control over the records requested by the Plaintiff.
7. MSHA is a component of the Department of Labor as described in the Department of Labor's FOIA regulations, 29 C.F.R. §70.2.
8. Plaintiff's circuit court suit against Iluka under the Florida Whistle-Blower Act is styled as *Robert Hawkins v. Iluka Resources, Inc., Case No. 16-2004-CA-005357, Div. CV-H, Fourth Judicial Circuit, Duval County, Florida.*
9. Plaintiff has exhausted all administrative prerequisites to this FOIA action. Each and every condition precedent to this suit has been performed, has occurred, has been waived, or Defendant is estopped to assert such matters.
10. On June 11, 2004, Plaintiff, through undersigned counsel, sent a request for records by letter to Ms. Carolyn T. James, Assistant Director, Technical Compliance and Investigative Office of the U.S. Department of Labor Mine Safety and Health Administration located at 1100 Wilson Boulevard, Arlington, Virginia 22209-3939. Plaintiff agreed to pay fees to the extent required by law. The request was acknowledged by the Department of Labor in a letter dated June 24, 2004.

11. Plaintiff sought the following records:

All complaints and charges; materials in field investigative files related to the complaints and charges; statements given by Mr. Hawkins, Iluka, or other witnesses; communications from or with Mr. Hawkins, Iluka, or other witnesses; information provided by Mr. Hawkins, Iluka, or witnesses; agency and investigator notes, analyses and memoranda; communications with other agencies, or analysis of action by same; records, correspondence, documents, summaries of oral discussions, summaries of results, decisions and determinations, any and all United States postal service or other mail service documentation or certified return receipt requested on mailings; and any other documents which in any way relate to the subject matter of the complaint.

12. On July 26, 2004, Plaintiff received a letter from MSHA dated July 20, 2004.

MSHA produced some documents and withheld others, based on various asserted statutory exemptions. Specifically, the response asserted the following exemptions:

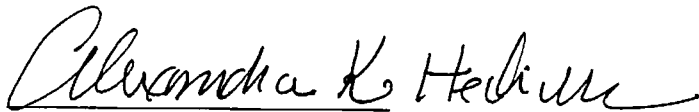
- (a) Some information is withheld from public disclosure under exemption 7(C) of the FOIA protecting information which, if disclosed, could reasonably be expected to constitute an unwarranted invasion of privacy. This investigatory information is of personal nature and disclose could compromise sources.
- (b) Information, including interview materials, the disclosure of which could reasonably be expected to divulge the identity of a confidential source, is withheld under exemption 7(D) of the FOIA. The purpose of this exemption is to prevent disclosure of information which could subject sources to harassment and intimidation. Disclosure would make it harder to conduct future investigations because individuals would be reluctant to come forward with necessary information if their identities were to be disclosed.
- (c) Pre-decisional materials, including staff opinions and recommendations are withheld under Exemption 5 of the FOIA that protects internal deliberations.

13. On October 15, 2004, Plaintiff, through counsel, filed an administrative appeal to the Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. The appeal was acknowledged by the Department of Labor in a letter dated October 25, 2004.
14. The Department of Labor has not responded to the appeal within 20 working days of the agency's receipt as required by FOIA. Therefore, Plaintiff has exhausted his administrative remedies.
15. Defendants have failed to comply with FOIA by wrongfully withholding documents based on exemptions that do not apply. Moreover, Defendants have failed to provide Robert Hawkins with any information concerning the documents that are responsive to his request.
16. Defendant's final determination is arbitrary, capricious and otherwise unlawful.
17. Plaintiff has the statutory right to the requested records, and there is no legal basis for the refusal to produce them.
18. FOIA requires that this Court conduct a *de novo* review of Robert Hawkins' FOIA request for documents.
19. Plaintiff engaged the undersigned attorneys and agreed to pay them a reasonable fee for bringing this action.
20. Plaintiff is entitled to attorney's fees in this case as provided in 5 U.S.C. § 552.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays that this Court:

- (a) Declare that the Defendant's refusal to disclose the records requested by the Plaintiff is unlawful;
- (b) Enjoin Defendant from withholding the records;
- (c) Order Defendant to produce the records to the Plaintiff;
- (d) Award the Plaintiff the costs and reasonable attorney fees in this action; and
- (e) Grant such other relief as the Court may deem just and proper.



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Attorney for Plaintiff

Dated: March 25, 2005